

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 4.2
Eastern Division**

Kevin Sterk, et al.

Plaintiff,

v.

Case No.: 1:11-cv-01729

Honorable Matthew F. Kennelly

Redbox Automated Retail, LLC

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, October 10, 2011:

MINUTE entry before Honorable Matthew F. Kennelly: The Court denies defendant's motion to dismiss the Video Privacy Protection Act (VPPA) "disclosure" claim in plaintiffs' amended consolidated complaint. The VPPA prohibits disclosure, absent informed consent, of "personally identifiable information" (PII), defined as "information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider." 18 U.S.C. § 2710(a)(3) & (b)(2). Plaintiffs' bare allegation that defendants disclosed plaintiffs' PII without their consent might be insufficient, by itself, to satisfy the pleading requirement of Rule 8 as described in *Bell Atlantic Corp v. Twombly* and *Ashcroft v. Iqbal*. But plaintiffs' complaint also cites defendant's "terms of use and privacy policy." That policy, which plaintiffs may cite in response to defendant's motion because they identified it in their complaint, indicates on its face that defendant reserves the right to disclose not simply to use information that includes (among other things) PII within the meaning of the VPPA. Plaintiffs' allegation may turn out to be unfounded, as defendant strongly suggests, but that is not a basis to grant a motion to dismiss for failure to state a claim. The Court directs defendant to answer the amended consolidated complaint by no later than 10/25/11. The status hearing set for 10/17/11 is vacated and reset to 11/10/11 at 9:00 a.m., in chambers (Room 2188). (mk)

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